IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE REFERENCE NO. 2 OF 1999

The Simplex Mills Co.Ltd .. Applicant

vs

CCE, Mumbai-IV .. Respondent

Mr.M.H.Patil a/w Ms.Aparna Hirandagi for Applicant

Mr.A.S.Rao with Mr.Parag Vyas for Respondent

CORAM : S.RADHAKRISHNAN &
V.C.DAGA, JJ

DATE : 7th June, 2007

P.C.

1. Heard learned counsel for the applicant and

respondent.

2. In the above, following three substantial

questions of law have been referred to this Court

by way of reference :

" 1. Whether invoice issued under Rule 52A of CER by a Manufacturer and endorsed in favour of Modvat availer is valid under first proviso to Rule 57 G (2) of CER after 1-4-1994 ;

2. Whether invoice issued by a Dealer who has bought the inputs from a manufacturer/dealer who got the inputs manufactured ut of his own raw materials could be considersed as valid for modvat purpose under Notn.No. 15/94-CE (NT) dated 30-3-1994.

3. Whether deficiency in duty paying documents can be the sole ground for denial of substantial benefit of credit of Modvat."

3. All the above three questions of law are interconnected and involves interpretation of section 57 G of Central Excise Rules. Learned counsel for the respondent pointed out that the issue is squarely covered by our judgment in Marmagoa Steel Ltd vs Union of India 2005 (192) E.L.T.82 (Bom) wherein learned counsel strongly relied on para 10 of the said judgment which reads as under :

> ." For availing the credit of duty, what is required to be established under Rule 57 G is that the inputs received are in fact duty paid. The procedure set out in Rule 57G of the Central Excise Rules is to ensure that the credit is taken on the basis of duty paid documents. The bill of entry is one such document set out in Re 57G. The said rule does not require that the bill of entry should be in the name of the person claiming credit of duty. It is not in dispute that the goods imported and cleared on payment of duty by one person can be used as inputs and credit of duty can be claimed by another person by establishing that the imported duty paid goods have been received as inputs and that the importer has not taken credit of that duty. In the present, it is established that the duty paid goods are received as inputs. However, the credit is denied on the ground that the Bill of entry is not endorsed in the name of the appellant. Rule 57G does not require that for taking credit of duty, the bill of entry should be endorsed in the name of the claimant. Counsel for the revenue could point out any provision of law in the Actr or the Rules regarding the endorsement on the bill of entry. In the absence of any provision regarding endorsement on the bill of entry, the credit of duty cannot be denied on the ground that the bill of entry is not endorsed in the name of the claimant. As stated hereinabove, what is required to be established for taking credit of duty is that the goods used as inputs are duty paid and that the credit of duty paid on the said goods has not been taken. In the facts of

the present case, the evidence on record i.e. bills of entry together with the certificates issued by excise authorities at Surat and Goa, clearly show that the goods imported and cleared under the bills of entry on payment of duty were received and utilised by the appellant as inputs inits factory and that the importer has not utilised the credit of duty paid on the said goods. Thus, the appellant has established that the inputs received under the bills of entry were duty paid and therefore, the authorities below were not justified in denying the credit of duty to the appellant. The two decisions relied upno by the Tribunal do not support the case of the revenue. In the case of Balmer Lawrie & Co (supra) the issue was not relating to the endorsement on the bills of entry and, therefore, the said decision is distinguishable on facts. Similarly, the decision of the Tribunal in the case of Tata Iron and Steel Co.Ltd (supra) is also distinguishable on facts as the said decision is based on erroneous concession made by the counsel for the appellant therein that in the case of Balmer Lawrie & Co it is held that the Modvat credit is not available on the basis of endorsed copies of bills of entry. "

Under the facts and circumstances, in view of the aforesaid interpretion of the Division Bench, questions are answered in favour of the assessee and against the revenue.

4. Reference stands disposed of accordingly.

(V.C.Daga, J) (Dr.S.Radhakrishnan, J)